

COOL

**Agency.**

## ORDER

Gregory F. Beckel went through the steps of the grievance process during 2000 and ultimately filed an appeal with the Merit Employee Relations Board ("MERB" or "Board") which was heard by the Board on December 21, 2000. The Board, among other things, considered Mr. Beckel's contention that his position should be reclassified to make his paygrade equivalent to the paygrade for another supervisor position which he asserted was comparable to his position. The Board determined that Mr. Beckel's contention was not appealable to the Board because under the Statute and Merit Rules the only reclassification appeal which may be

appealed to the Board is a Maintenance Reclassification Appeal pursuant to 29 Del. C. §5915. The Board also noted that grievances involving Critical Reclassifications or determinations of paygrades are not within the jurisdiction of the Merit Employee Relations Board citing *Parker v. Department of Corrections, Merit Employee Relations Board*, Del. Super., 2000 WL 973318 (Del. Super.) The decision in this initial grievance appeal (Docket No. 01-08-218) was not appealed.

In April of 2003, Mr. Beckel sent a letter to the Merit Employee Relations Board in which he discussed his prior grievance decision and noted that subject about which he was now contacting the Board was the matter which the Board had previously determined was not within its jurisdiction to hear. He indicated that he was still frustrated by the inequity between positions he asserts are similar in different counties but which carry different paygrades and by his inability to get his position reclassified. In his letter to the Board Mr. Beckel states "Any help or advice would be greatly appreciated. Thank-you in advance for your time and consideration."

This letter of April 22, 2003 by Mr. Beckel was docketed as grievance appeal Docket No. 03-04-289. Hearing on this Docket was continued once at the request of Mr. Beckel and on October 4, 2004 a request for further continuance from Mr. Beckel was denied by the Board Chairperson due to the age of the grievance appeal and the prior granting of a continuance at the request of Mr. Beckel.

The Board convened on November 4, 2004 to consider this Docket. Mr. Beckel was advised of his right to appear with legal counsel and advised the Board that he would represent himself. At the hearing, as a preliminary matter, the Agency moved the Board to dismiss the appeal for lack of jurisdiction. The Board heard argument from both parties concerning its

jurisdiction to hear the appeal, deliberated and, by unanimous vote, announced its determination that it was without jurisdiction to hear Mr. Beckel's grievance appeal.

### **FINDINGS AND DISCUSSION**

Not every grievance matter can be resolved by the Board and the Board can only consider appeals which are properly before it in conformity with the Merit Rules and Statutes. *Maxwell v. Vetter*, 311 A. 2d 864 (Del Super.) (1973).

Under Merit Rule 12.9 there are direct appeals to MERB for dismissal, demotion or suspension and other matters must either go through the steps of the grievance process (See Merit Rule 18.0) or must have a statutory basis such as a Maintenance Reclassification Appeal under 29 Del. C. §5915. Mr. Beckel's present grievance appeal does not qualify as a matter which can be directly appealed to the Board and has not been through the grievance step process.

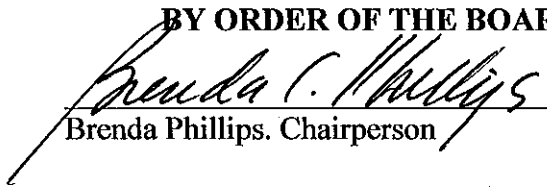
The essential feature of Mr. Beckel's concern appears to be that his position still has not been critically reclassified from a site supervisor to a unit director and that he was not advised by his management of the review of his position and the results of any such review. He continues to believe that there are inequities in similar position classifications and is frustrated by his apparent inability to have his viewpoint accepted by management. However, Mr. Beckel's current grievance does not qualify as a Maintenance Reclassification Appeal and, as the Board noted in the prior decision on Mr. Beckel's first grievance, paygrade determinations and critical reclassification determinations are not within the Board's jurisdiction. *Parker v. Department of Corrections, Merit Employee Relations Board*, Del. Super., 2000 WL 973318 (Del. Super.).

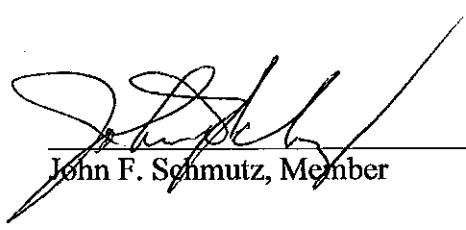
Therefore, both procedurally and substantively there is no basis for the Board to consider this appeal.

**ORDER**

The motion to dismiss the grievance appeal of Gregory F. Beckel in MERB Docket No. 03-04-289 is granted and the appeal is dismissed as it is not within the Board's jurisdiction.

**BY ORDER OF THE BOARD:**

  
Brenda Phillips, Chairperson

  
John F. Schmutz, Member

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John W. Pitts, Member

**APPEAL RIGHTS**

29 Del. C. §5949 provides that the grievant shall have a right of appeal to the Superior Court on the question of whether the appointing agency acted in accordance with law. The burden of proof of any such appeal to the Superior Court is on the grievant. All appeals to the Superior Court are to be filed within thirty (30) days of the employee being notified of the final action of the Board.

29 Del. C. § 10142 provides:

(a) Any party against whom a case decision has been decided may appeal such decision to the Court.

(b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.

(c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.

(d) The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Jan. 7, 2005  
Mailing Date:

Distribution:

Original: File

Copies: Grievant

Agency's Representative

Board counsel